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Standing Committee on the Legislative Assembly

Report on the Report on
Ministerial Compliance with
the Conflict of Interest Guidelines
and Recommendations
with Respect to those Guidelines
(The Aird Report)

2nd Session 33rd Parliament
35 Elizabeth II

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STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY



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TORONTO, ONTARIO
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MEMORANDUM OF THE STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

MICHAEL J. BREAGH
Chairman

The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Legislative Assembly has
the honour to present its Report and commends it to the
House.

A handwritten signature in dark ink, reading "Michael Breaugh".

Michael J. Breaugh, M.P.P.
Chairman

Assistant Clerk of the Committee

JOHN STORMANS
Assistant Clerk

HELEN HALL
Assistant Clerk

Queen's Park
December 1986

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**MEMBERSHIP OF THE STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY***

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Chairman

REMO MANCINI
Vice-Chairman

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DAVID W. WARNER

LYNN MELLOR
Clerk of the Committee

TODD J. DECKER
Assistant Clerk of the Committee

JOHN EICHMANIS
Research Officer

MERIKE MADISSO
Research Officer

* The following Members were substitute Members on the Committee during its deliberations on the Aird Report:

ROBERT V. CALLAHAN
DAVID R. COOKE (KITCHENER)
CHRISTINE HART
PETER PARTINGTON

CLAUDIO POLSINELLI
ALAN W. POPE, Q.C.
NORMAN W. STERLING, Q.C.



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TABLE OF CONTENTS

INTRODUCTION	1
RECOMMENDATIONS	2
1. The Need for Legislation	2
2. Legislation to Cover all Members of the Assembly	3
3. Civil Servants Covered by Legislation	4
4. Public Disclosure	5
5. Divestment and Trusts	5
6. Spouses and Children	6
7. Outside Business Activity	7
8. The Final Decision	7
9. Sanctions	8
10. Lobbyists and Lobbying	8
APPENDIX A – Dissenting Opinion by the Progressive Conservative Party	10

INTRODUCTION

On Wednesday, October 15, 1986, the House ordered that the Standing Committee on the Legislative Assembly review and report on John B.

Aird's Report on Ministerial Compliance with Conflict of Interest Guidelines and Recommendations with Respect to those Guidelines.

Your Committee took up its reference by reviewing the Aird Report including the Draft Conflict of Interest Act attached to that report. After careful deliberation, the Committee decided that it would not make detailed proposals with respect to draft legislation, on the understanding that the Government will shortly introduce its own conflict of interest legislation. Moreover, the Committee assumes that after the Government has introduced its Bill, that Bill will be referred to the Committee after second reading, when the Committee will have the opportunity to make more detailed recommendations. In light of these assumptions, the Committee will in this report provide the House with broad recommendations setting out the parameters of what any conflict of interest legislation in Ontario should encompass.

The recommendations contained in this report represent a consensus of opinion rather than complete agreement on every issue that was before the Committee. While every Member of the Committee may not agree with every recommendation, your Committee is pleased to present a report that each Member can support.

RECOMMENDATIONS

After reviewing the proposals for a Conflict of Interest Act contained in the Aird Report, the Committee concludes that it is in general agreement with the direction and thrust of the Report. The Committee welcomes the proposal that there be legislation rather than guidelines. However, the Committee feels that conflict of interest legislation should be applicable to all Members of the Ontario Legislature.

In what follows, the Committee will set out the basic principles that it believes should be contained in any proposed legislation. It does so on the understanding that the Government will soon introduce such legislation in the House. Consequently, its recommendations are designed to provide a legislative perspective for the Government's consideration.

1. The Need for Legislation

In assessing the way the Premier's Conflict of Interest Guidelines worked or failed to work, the Committee strongly believes that in the future the regulation of conflict of interest should be established through legislation. A legal framework will impose a stricter obligation to comply than mere guidelines. Moreover, the Committee is of the view that the conflict of interest provisions should form part of the Legislative Assembly Act. This Act sets out the rights, duties and obligations of Members of the Assembly, as well as conditions for being a Member. The Act, thus, imposes a regulatory framework and a standard of conduct for Members. Conflict of interest provisions would fall naturally within this framework, particularly since the Committee will recommend that all Members, not just Cabinet Ministers, be included in conflict of interest legislation.

Your Committee, therefore, recommends that:

The Government introduce conflict of interest legislation and that such legislation form part of the Legislative Assembly Act.

2. Legislation to Cover all Members of the Assembly

The Committee feels that all Members of the Assembly should be covered by conflict of interest legislation. It makes this recommendation because the current conflict of interest provisions covering all members are confusing and inadequate. Standing Order 23, for example, stipulates that:

No Member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any Member who has such an interest shall be disallowed.

Moreover, section 10 of the Legislative Assembly Act sets out the conditions under which a person is ineligible to be a Member. Section 11 provides exceptions to Section 10, but also stipulates that, in a number of cases, a Member may not vote on certain matters in which he has an interest. (The definition of "pecuniary interest" in the Draft Conflict of Interest Act introduces more confusion because it seems to conflict with s. 10 and 11 of the Legislative Assembly Act.)

One of the difficulties with both the Standing Orders and the Legislative Assembly Act is that it is not clear how a Member is to declare his or her interest – should all Members be required to make a public disclosure statement setting out their pecuniary interests?

However, there is a more important concern also. Over the length of a parliament, a variety of bills are passed. Should those Members who are farmers never vote on farm bills, or those who are teachers never vote on education bills, or those who are professionals never vote on those bills which affect their particular profession, particularly if in each case the bills provide for some pecuniary gain? It is the Committee's opinion that this dilemma could be resolved to some extent by including in the conflict of interest legislation a provision similar to s. 11 (n) of the Legislative Assembly Act. It would provide that a Member is not in conflict if the benefit in question is conferred on a wide segment of the Ontario public.

Your Committee, therefore, recommends that:

Conflict of Interest legislation should include not only Cabinet Ministers but also ordinary Members of the Assembly; however, the rules governing the conduct of ordinary Members should be appropriately designed to cover their particular duties and obligations.

3. Civil Servants Covered by Legislation

The Committee believes that senior civil servants should come within the same statutory conflict of interest rules as would apply to Cabinet Ministers. At present, as set out in the regulations pursuant to the Public Service Act and amplified in the Manual of Administration, conflict of interest matters are resolved internally through a Ministry's chain of command. It is the duty of civil servants to voluntarily report any real or perceived conflict of interest to their superior, who is required to resolve the matter. The Committee feels that these procedures may be inadequate, particularly in the case of senior civil servants who have access to information that could be used for personal pecuniary benefit. Under these circumstances it may be appropriate for senior civil servants to be subject to such provisions as the public disclosure of their interests, blind trust arrangements, delegation of authority where a decision could create a pecuniary benefit and similar provisions. While the Committee believes that such conflict of interest rules for senior civil servants would be justified, it makes no recommendation as to the appropriate legislative mechanism – that is, whether conflict of interest rules applying to senior civil servants should be incorporated into the Legislative Assembly Act or the Public Service Act. Moreover, it has not determined a definition of "senior civil servant."

Your Committee, therefore, recommends that:

The Government consider including an appropriately defined level of senior civil servants within a statutory conflict of interest scheme so that the provisions applying to senior civil servants would be the same as those applying to Cabinet Ministers.

4. Public Disclosure

The full and complete public disclosure of their pecuniary interests and liabilities by all Members of the Legislature should be the cornerstone of any conflict of interest legislation. Only with public disclosure can other Members of the Legislature and the public of Ontario be assured that public interest considerations will prevail over narrow personal interests. Full disclosure will provide a mechanism by which to monitor and evaluate a Member's, a Cabinet Minister's or a civil servant's conduct and in so doing will prove an effective disincentive to the making of decisions that are not in the public interest.

Your Committee, therefore, recommends that:

Any conflict of interest legislation introduced in the House should contain a provision requiring ordinary Members, Cabinet Ministers and senior civil servants to make public disclosure of their pecuniary interests and liabilities.

5. Divestment and Trusts

The Aird Report proposes that Cabinet Ministers, in addition to making public disclosure of their pecuniary interests and liabilities, should have the option of placing assets in a trust in a manner prescribed in the Draft Conflict of Interest Act.

The Committee believes that Cabinet Ministers should have available to them several procedures they could use to avoid potential conflicts of interest. Thus, when a Minister seeks advice from the Compliance Commissioner, the latter, after determining the particular circumstances of that Minister, should be able to advise that either the Minister place his interests in a blind trust or completely divest them by selling them. The Committee envisages that, for example, where a Minister owns a private business, it may not be fair to ask the Minister to completely divest this interest. On the other hand, where the Minister holds shares in a public company, he or she could be required to sell those shares if the particular circumstances of the Minister warrant such divestment. In other words, whether a Minister is required to merely disclose his or her pecuniary interests publicly, place those assets in a blind trust, or completely divest those interests will depend on the seriousness of any potential conflict of interest.

With respect to ordinary Members, the Committee feels that in most circumstances the trust provision will not be applicable. However, the Committee does not wish to preclude the use of this provision by ordinary Members where circumstances warrant. Again the Compliance Commissioner would be responsible for advising ordinary Members as to the appropriate course of action.

Your Committee, therefore, recommends that:

Any conflict of interest scheme should include a blind trust provision and a complete divestment provision for Cabinet Ministers and senior civil servants; and that in the case of ordinary members the blind trust provision should also be a possible requirement for compliance.

6. Spouses and Children

It is the Committee's view that spouses and minor children of Cabinet Ministers should be included in conflict of interest legislation. They also should be required to make public disclosure of their pecuniary interests and liabilities as well as be required to comply with any trust provisions. With respect to defining "spouse" and "minor children," the Committee is content to use the definitions set out in the Draft Conflict of Interest Act attached to the Aird Report. In other words, "minor children" would include those 18 years and under, and "spouse" would include any married spouse and also any common law spouse.

The Committee also does not rule out the inclusion of other family Members within this provision. Thus, it may be appropriate to include close family relatives with whom, for example, a Cabinet Minister has common business interests. In such cases, these family relatives should be required to file a public disclosure statement.

Your Committee, therefore, recommends that:

Spouses and minor children of a Cabinet Minister be included in conflict of interest legislation, and that consideration be given to including close family relatives, requiring the Minister to make a public disclosure statement when the Minister has common business interests with that relative.

7. Outside Business Activity

Over the last several decades it has become apparent that the Ontario Legislature has moved from part-time to full-time activity. The House now sits up to seven months or more a year, and during the inter-sessions most committees of the House sit to fulfill their legislative functions and responsibilities. For all intents and purposes, Ontario MPPs have become full-time legislators. The Cabinet Ministers are naturally included in this categorization, except that they have even more onerous duties and responsibilities.

The Aird Report clearly envisages that Cabinet Ministers are not to carry on business other than that of Minister. The question remains whether the same rule should apply to ordinary Members. The Committee is of the opinion that business activity of ordinary members should be restricted only if members' salaries are increased, as has been recommended by the Commission on Election Contributions and Expenses.

8. The Final Decision

As suggested by the Aird Report, the Compliance Commissioner would have the power to make a final decision as to whether a Member had complied with the Act or not, as well as to suggest any remedial action that should be taken so that the Member is in compliance with the Act. While in general the Committee agrees with this suggestion, it does raise the possibility that there may be occasions when Members deliberately refuse to seek the advice of the Commissioner or refuse to abide by the advice given. Under these circumstances, the Committee believes that the complaint should be a matter for the Legislative Assembly to decide. The Committee recommends that these complaints be referred to the Standing Committee on the Legislative Assembly.

The official charged with investigating all alleged conflicts of interest would be asked by the Committee to report the facts of the case. The Committee would then make a determination in the matter.

Your Committee, therefore, recommends that:

In cases where advice from the Commissioner has not been sought or has been ignored, allegations of conflict of interest shall be referred to the Standing Committee on the Legislative Assembly for resolution.

9. Sanctions

Once the House receives a report of the Standing Committee on the Legislative Assembly with respect to an allegation of conflict of interest in instances cited above, the Assembly should have the power to determine the appropriate penalty. The penalties that the Committee proposes for consideration by the Legislative Assembly are those already contained in the Legislative Assembly Act and those that have been traditionally available to the Legislative Assembly according to parliamentary practice.

Your Committee, therefore, recommends that:

Penalties for breaches of conflict of interest legislation should be the same as the penalties provided for in the Legislative Assembly Act, and any penalties that the Legislative Assembly can impose according to parliamentary practice.

10. Lobbyists and Lobbying

One of the recommendations made by the Aird Report is the requirement that former Ministers' contacts with government officials be reported to the Commissioner and that the incumbent Minister prevent the former Minister from benefitting from such a contact. This provision covers the activities of former Ministers for a period of one year after a Minister ceases to hold his or her portfolio. However, this provision, in addressing the propriety of lobbying by former Ministers, raises the broader issue of lobbying. It is the Committee's view that this issue must be addressed by the House. Should all Members, including Cabinet Ministers, be required to disclose publicly the fact that they have some agreement, financial or otherwise, with some group, association or other body which requires that the Member perform some service, such as influencing Ministers with

respect to legislation? Should all lobbyists be registered publicly? Should there be restrictions on who should lobby? While these issues may not be appropriate in conflict of interest legislation, the Committee does feel they are sufficiently important to warrant further consideration.

APPENDIX A

DISSENTING OPINION BY
THE PROGRESSIVE CONSERVATIVE PARTY

The members of the Progressive Conservative Party on the Standing Committee on the Legislative Assembly object to the pre-emptive action of the Attorney General in introducing Bill 160, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their duties of Office, dealing with conflict of interest, while the Standing Committee on the Legislative Assembly is still in the process of reviewing the Aird Report, as the Committee was instructed to do, pursuant to an Order of the House of Wednesday, October 15, 1986.

For that reason, we dissent from the decision of the Committee to report this matter to the Legislative Assembly.

Submitted by: Gordon H. Dean
 Alan W. Pope, Q.C.
 Richard L. Treleaven, Q.C.
 John M. Turner

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